

AGENDA BILL APPROVAL FORM

Agenda Subject Concession Agreement with Optimist Club of Auburn, WA		Date: February 11, 2009
Department: Parks, Arts and Recreation	Attachments: Resolution No. 4452 and Agreement	Budget Impact:
Administrative Recommendation: City Council adopt Resolution No. 4452.		
Background Summary: Resolution 44512 authorizes the Mayor to execute an agreement between the City of Auburn and the Optimists Club of Auburn, Washington to operate the food concession stands at Game Farm Park. Optimists Club of Auburn is a non-profit organization and the concession provides a service to visitors of the parks, as well as funds for the organization.		
R-0302-2 O5.1		
Reviewed by Council & Committees: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. </div> <div style="width: 45%;"> COUNCIL COMMITTEES: <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Municipal Serv. <input checked="" type="checkbox"/> Planning & CD <input type="checkbox"/> Public Works <input type="checkbox"/> Other _____ </div> </div>		Reviewed by Departments & Divisions: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Building <input type="checkbox"/> Cemetery <input type="checkbox"/> Finance <input type="checkbox"/> Fire <input type="checkbox"/> Legal <input type="checkbox"/> Public Works </div> <div style="width: 45%;"> <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </div> </div>
Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Call for Public Hearing __/__/__ Referred to _____ Until __/__/__ Tabled _____ Until __/__/__		
Councilmember: Norman		Staff: Faber
Meeting Date: March 2, 2009		Item Number: VIII.B.2

RESOLUTION NO. 4 4 5 2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONCESSIONAIRE AGREEMENT BETWEEN THE CITY AND THE OPTIMISTS CLUB OF AUBURN WASHINGTON FOR THE WEST CONCESSION BUILDING OPERATIONS AT GAME FARM PARK BALLFIELDS FOR 2009

WHEREAS, the CITY is the owner of the premises commonly known as Game Farm Park; and

WHEREAS, the CITY has constructed upon the aforesaid premises a concession building; and

WHEREAS, the CONCESSIONAIRE would like to utilize said concession building to operate a food concession on the premises of Game Farm Park; and

WHEREAS, the CONCESSIONAIRE is a non-profit organization.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, IN A REGULAR MEETING DULY ASSEMBLED, HERewith RESOLVES AS FOLLOWS:

Section 1. The Mayor and City Clerk of the City of Auburn, Washington, are hereby authorized to execute a Concessionaire Agreement between the City and the OPTIMIST CLUB OF AUBURN, WASHINGTON for the concession building operation at the Game Farm Park ballfields for 2009 in a form substantially conforming with the Agreement attached hereto, designated as Exhibit "A", and incorporated by reference in this Resolution.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

DATED and SIGNED this _____ day of March, 2009.

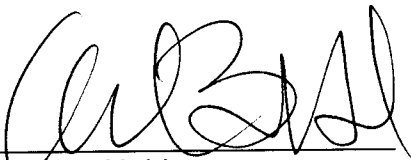
CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:



Daniel B. Heid,
City Attorney

Resolution No. 4 4 5 2
EXHIBIT "A"

AGREEMENT FOR FOOD CONCESSION SERVICES

THIS AGREEMENT is made and entered into this _____ day of March, 2009, by and between the CITY OF AUBURN, a municipal corporation of the State of Washington whose address is 25 West Main Street, Auburn, Washington 98001, hereinafter referred to as "CITY", and the OPTIMIST CLUB OF AUBURN, WASHINGTON, a non-profit organization organized under the laws of the State of Washington, whose address is Post Office Box 1794, Auburn, Washington 98071, hereinafter referred to as "CONCESSIONAIRE".

WHEREAS, The CITY is the owner of the premises commonly known as Game Farm Park; and

WHEREAS, the CITY has constructed upon the aforesaid premises a west concession building; and

WHEREAS, the CONCESSIONAIRE would like to utilize said concession building to operate a food concession on the premises of Game Farm Park; and

WHEREAS, the CONCESSIONAIRE is a non-profit organization;

NOW THEREFORE, in consideration of the promises, covenants, terms, and conditions herein contained, the parties agree as follows:

1. PURPOSE.

The purpose of this Agreement is to contract with CONCESSIONAIRE to provide a food concession at Game Farm Park for the benefit of the general public.

2. TERMS OF AGREEMENT.

The term of this Agreement shall commence on the 12th day of April, 2009, and terminate on the 14th day of November, 2009, unless sooner terminated as hereinafter provided.

3. SCOPE OF SERVICES.

- A. The CONCESSIONAIRE agrees that the concession operations shall not be conducted for personal gain. All profits derived from the concession operation shall be used for community projects as approved by the PARK BOARD.
- B. Any and all individuals employed by the CONCESSIONAIRE in the concession operation shall work without salary, wage, or compensation of any kind.
- C. The prices charged by the CONCESSIONAIRE for services, food, and drinks shall be reasonable and shall not be in excess of prices prevailing elsewhere for the same kind and quality of service.
- D. Sales shall be limited to food items and soft drinks,

PROVIDED the CONCESSIONAIRE shall not sell or provide

sunflower seeds, unshelled peanuts, styrofoam cups, or gum, AND PROVIDED FURTHER at no time shall CONCESSIONAIRE sell or give away any alcoholic beverages or allow any alcoholic beverages to be consumed on the premises.

- E. The concession shall have hours of operation as requested in the application for a concession permit and the concession shall remain open for all league and tournament games from the 12th day of April, 2009, to the 14th day of November, 2009, Monday through Sunday, and CITY shall provide to CONCESSIONAIRE a schedule of all league and tournament games.

4. SCOPE OF USE.

- A. The CITY hereby agrees that the CONCESSIONAIRE may use the west concession building located at Game Farm Park from April 12, 2009 to November 14, 2009 to operate as a food concession.
- B. The CONCESSIONAIRE shall not use or permit the premises to be used for any other purpose or for any unlawful or indecent activity.
- C. An adult supervisor shall be present at all times when the concession is in operation.

- D. The CONCESSIONAIRE shall not make any alterations, repairs, or improvements to the concession building, equipment, or to the area immediately around said building without obtaining the prior written consent of the Director of Parks, Arts and Recreation. Request to make any alterations, repairs, or improvement shall be in writing. Any such permitted alterations, repairs, or improvements shall be made at the expense of the CONCESSIONAIRE and shall become the property of the CITY. The CONCESSIONAIRE shall not post any signs without obtaining the prior written consent of the Director of Parks, Arts and Recreation.
- E. The CONCESSIONAIRE shall be responsible for the reasonable and proper care of the concession building. The CONCESSIONAIRE shall pay a fee of Fifty Dollars (\$50.00) per month of operation prior to occupation of the facility. The fee shall be deposited with the Parks, Arts and Recreation Department.

5. NONDISCRIMINATION.

The CONCESSIONAIRE shall provide service to the general public without discrimination as to age, sex, color, creed, national origin or mental, sensory, or physical handicap.

6. INCOME STATEMENT AND RIGHT TO INSPECT RECORDS.

The CONCESSIONAIRE shall submit to the Director of Parks, Arts and Recreation, not later than ten (10) days following the scheduled use of the concession building, i.e., ten (10) days from the date this agreement terminates as provided in paragraph 2 above, a statement of the gross and net profit of the concession for that period of operation. The CONCESSIONAIRE shall keep accurate records and the CITY shall have the right to inspect the books, records, and inventories of the CONCESSIONAIRE at any reasonable time for the purpose of ascertaining compliance with this Agreement.

7. INDEMNIFICATION/HOLD HARMLESS.

The CONCESSIONAIRE agrees to defend, indemnify, and hold harmless the CITY, its elected and appointed officials, employees, and agents from and against any and all claims, demands and/or causes of action of any kind or character whatsoever arising out of or relating to the CONCESSIONAIRE, its employees, subcontractors, or agents for any and all claims by any persons for alleged personal injury, death, or damage to their persons or property to the extent caused by the negligent acts, errors, or omissions of the CONCESSIONAIRE, its employees, agents, subcontractors, or representatives. In the event any suit or claim for damages based upon such claim, action, loss, or damages is

brought against the CITY, the CONCESSIONAIRE shall defend the same at its sole cost and expense; provided that the CITY retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the CITY and/or its officers, agents, and/or employees or any of them or jointly against the CITY and the CONCESSIONAIRE and their respective officers, agents, subcontractors, employees, or any of them, the CONCESSIONAIRE agrees to fully satisfy the same and the CONCESSIONAIRE shall reimburse the CITY for any cost and expense which the CITY has incurred as a result of such claim or suit. The provisions of this section shall survive the expiration or termination of this Agreement.

8. INDEPENDENT CONTRACTOR/ASSIGNMENT.

The parties agree and understand that the CONCESSIONAIRE is an independent contractor and not the agent or employee of the CITY and that no liability shall Attach to the CITY by reason of entering into this Agreement except as otherwise provided herein.

The parties agree that this contract may not be assigned in whole or in part without the written consent of the CITY.

9. INSURANCE.

CONCESSIONAIRE shall procure and maintain, for the duration of this Agreement, liability insurance against claims for injuries against claims for injuries to persons or damages to property which may

arise from, or in connection with, services provided to the CITY by the CONCESSIONAIRE, its agents, employees, or subcontractors, under this Agreement. The CONCESSIONAIRE agrees to provide comprehensive general liability insurance and shall maintain liability limits of no less than One Million Dollars (\$1,000,000.) combined single limit per occurrence for bodily injury, personal injury, products liability, and property damage. Any deductible or self-insured retentions in either policies must be declared to, and approved by, the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self insured retentions as respects the CITY, or procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expense. The policy is to contain, or be endorsed to contain, the following provisions:

- A. The CITY, its officers, employees, and agents are to be covered as insureds as respect: Liability arising out of services or responsibilities performed by or under the obligation of the CONCESSIONAIRE under the terms of this Agreement, its employees, agents, and subcontractors. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officials, employees, or agents.

- B. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the CITY, its officials, employees, or agents.
- C. Coverage shall state that the CONCESSIONAIRE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- D. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail return receipt requested has been given to the CITY. The CONCESSIONAIRE agrees to provide copies of the Certificates of Insurance to the CITY at the time this Agreement takes effect.
- E. The CONCESSIONAIRE shall furnish the CITY with Certificates of Insurance and with original endorsements affecting coverage required by this clause. The CITY reserves the right to require that complete, certified copies of all required insurance policies be submitted to the CITY at any time.

10. TERMINATION OF AGREEMENT.

- A. This Agreement may be cancelled by either party upon two (2) weeks written notice. In the event of any breach of any of the terms or provisions of this Agreement, the CITY shall have, in addition to any other recourse, the right to terminate this Agreement, to enter and obtain possession of the entire premises, to remove and exclude any and all persons from the premises, and to remove and exclude all property of the CONCESSIONAIRE therefrom all without service of notice or resort to legal process and without a legal liability on its part.
- B. Upon the termination of this Agreement the CONCESSIONAIRE shall peacefully surrender and deliver up possession of the premises to the CITY, including all improvements or any additions thereto, in good order and condition, reasonable wear and tear excepted. From and after the last day of scheduled use, CONCESSIONAIRE shall have seven (7) days in which to remove and clear the building of all its belongings.

11. A RIGHT TO INSPECTION.

The CITY shall have the right to make inspections at any reasonable time to assure compliance with this Agreement.

12. DISPLAY OF HEALTH DEPARTMENT PERMITS

CONCESSIONAIRE is required to obtain and display all Health Department permits, which are required by law.

CONCESSIONAIRE agrees to operate the concession in compliance with all applicable Health Department requirements.

13. GENERAL PROVISION

- A. No waiver by either party of any breach or default hereunder shall be deemed a waiver of any preceding or any subsequent breach or default.
- B. This Agreement may not be changed or modified nor any provision hereof waived except in writing agreed to by both parties.
- C. This Agreement shall be construed in accordance with any and all questions with respect hereto by the laws of the State of Washington.
- D. Either party agrees to pay all reasonable costs, attorneys' fees and expenses that may be incurred by the other party who substantially prevails in enforcing the provisions of this Agreement.
- E. In the performance of the services, the CONCESSIONAIRE agrees to comply with all applicable federal, state, and local laws, rules, and regulations.

F. Notices required pursuant to this Agreement shall be mailed to the parties at the addresses set forth above and shall be deemed given when so mailed.

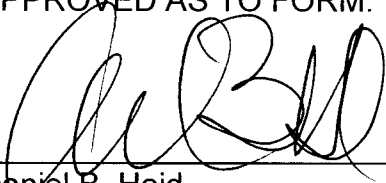
CITY OF AUBURN

PETER B. LEWIS,
MAYOR

ATTEST:

Danielle Daskam
City Clerk

APPROVED AS TO FORM:



Daniel B. Heid,
City Attorney

OPTIMIST CLUB OF AUBURN, WASHINGTON

BY: _____

TITLE: _____

STATE OF WASHINGTON)) ss
COUNTY OF KING)

On this _____ day of _____, 2009, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared _____, to me known to be the _____ of the **OPTIMIST CLUB OF AUBURN, WASHINGTON**, the non-profit corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said non-profit organization, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument on behalf of said non-profit organization.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date hereinabove set forth.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
MY COMMISSION expires _____